

AMENDED IN SENATE APRIL 18, 2006

**SENATE BILL**

**No. 1325**

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**Introduced by Senator Scott**

February 16, 2006

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An act to amend Sections 7620, 7630, 7633, 7825, 8700, and 8815 of, and to add Sections 7606 and 8613.5 to, the Family Code, relating to adoption.

LEGISLATIVE COUNSEL'S DIGEST

SB 1325, as amended, Scott. Adoption.

(1) *Existing law requires a person who may have conceived a child by an act of intercourse to submit to the jurisdiction of the courts of this state and specifies the venue where an action may be filed by or against that person. Existing law permits a child, a child's natural mother, a presumed father or other interested party, as specified, to bring an action to determine the existence or nonexistence of a father and child relationship.*

*This bill would additionally require a person who causes conception through assisted reproduction in this state to submit to the jurisdiction of the courts of this state. This bill would additionally permit a person who enters an assisted reproduction agreement, as specified, to bring an action to establish a parent and child relationship. This bill would require an action by or against that person to be filed where the assisted reproduction occurs or as stipulated in an assisted reproduction agreement.*

(2) *Under existing law, an action to determine a parent and child relationship may be brought before the birth of that child.*

*This bill would permit the court to enter an order or judgment based on that action before the birth of the child.*

(3) *Under existing law, if a parent is convicted of a felony, a proceeding to terminate parental rights may be filed.*

*This bill would additionally permit the court, as part of a proceeding to terminate parental rights, to consider a parent's criminal record prior to the felony conviction in making a finding that a parent is unfit to have future custody or control of his or her child.*

(4) *Under existing law, if a proceeding to terminate the parental rights of a presumed father has been filed, an action to determine the parent and child relationship between the presumed father and child is required to be consolidated with the termination proceeding.*

*This bill would require an action to determine the existence or nonexistence of a parent and child relationship between a presumed father and child to be consolidated with a proceeding that has been filed for the emancipation of the child.*

(5) *Under existing law, a birth parent may relinquish a child to a licensed adoption agency for the adoption of that child. Existing law requires the licensed adoption agency to forward a written relinquishment signed by the birth parent to the Department of Social Services. Under existing law, that relinquishment is final within 10 business days after the relinquishment is filed with the department, unless a longer period of time is necessary, as specified. Under existing law, if a birth mother relinquishes a child, the presumed father of that child may waive notice of or consent to the adoption of the child if he executes a form developed by the department before a notary.*

*This bill would require the relinquishment to be final when the department sends written acknowledgment of receipt of the relinquishment. This bill would require, if the department fails to send written acknowledgment of receipt of the relinquishment, that the relinquishment is deemed final 10 business days after the licensed adoption agency sent and filed the relinquishment with the department. This bill would permit a presumed father to waive notice of or consent to the adoption if he executes the form developed by the department before a representative of a licensed adoption agency.*

(6) *Under existing law, if a birth parent rescinds consent to an adoption within a time specified and requests return of the child, the child is immediately returned to the birth parent.*

*This bill would require the court, if a birth parent rescinds consent to an adoption and before the child is returned to the birth parent, to*

make a finding that the return of the child to the birth parent serves the best interests of the child.

*(7) Under existing law, if a prospective adoptive parent is in military service or service for another recognized entity, as specified, and shows by satisfactory evidence that it is impossible or impracticable to appear in court for an adoption proceeding, the prospective adoptive parent may make his or her appearance at the proceeding through an attorney.*

*This bill would additionally permit a prospective adoptive parent to appear at an adoption proceeding through an attorney if the prospective adoptive parent shows by satisfactory evidence that there is a substantial hardship in appearing at the adoption proceeding.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 7606 is added to the Family Code, to*  
2     *read:*

3     7606. (a) *As used in this part, the following definitions shall*  
4     *apply:*

5     (1) *“Assisted reproduction” means conception by any means*  
6     *other than sexual intercourse.*

7     (2) *“Assisted reproduction agreement” means a written*  
8     *agreement by a person who intends to be the parent of a child or*  
9     *children born through assisted reproduction.*

10    *SEC. 2. Section 7620 of the Family Code is amended to read:*

11    7620. (a) *A person who has sexual intercourse or causes*  
12    *conception with the intent to become a parent by assisted*  
13    *reproduction in this state thereby submits to the jurisdiction of*  
14    *the courts of this state as to an action brought under this part with*  
15    *respect to a child who may have been conceived by that act of*  
16    *intercourse or assisted reproduction.*

17    (b) *An action under this part shall be brought in one of the*  
18    *following:*

19    (1) *The county in which the child resides or is found.*

20    (2) *The county in which a licensed California adoption agency*  
21    *maintains an office if that agency brings the action.*

(3) If the father is deceased, the county in which proceedings for probate of the estate of the father of the child have been or could be commenced.

(4) *The county in which conception through assisted reproduction occurs or as stipulated in an assisted reproduction agreement.*

**SECTION 1.**

**SEC. 3.** Section 7630 of the Family Code is amended to read:

7630. (a) A child, the child's natural mother, a man presumed to be the child's father under subdivision (a), (b), or (c) of Section 7611, an adoption agency to whom the child has been relinquished or a prospective adoptive parent of the child, may bring an action as follows:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611.

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under subdivision (a), (b), or (c) of Section 7611 only if the action is brought within a reasonable time after obtaining knowledge of relevant facts. After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

(b) Any interested party may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under subdivision (d) or (f) of Section 7611.

(c) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under Section 7611 or whose presumed father is deceased may be brought by the child or personal representative of the child, the Department of Child Support Services, the mother or the personal representative or a parent of the mother if the mother has died or is a minor, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(d) (1) If a proceeding has been filed under Chapter 2 (commencing with Section 7820) of Part 4, an action under subdivision (a) or (b) shall be consolidated with ~~the~~ that

1 proceeding. The parental rights of the presumed father shall be  
2 determined as set forth in Sections 7820 through 7829, inclusive.

3 (2) If a proceeding pursuant to Section 7662 has been filed  
4 under Chapter 5 (commencing with Section 7660), an action  
5 under subdivision (c) shall be consolidated with ~~the~~ *that*  
6 proceeding. The parental rights of the alleged natural father shall  
7 be determined as set forth in Section 7664.

8 (3) The consolidated action under paragraphs (1) or (2) shall  
9 be heard in the court in which the proceeding is filed, unless the  
10 court finds, by clear and convincing evidence, that transferring  
11 the action to the other court poses a substantial hardship to the  
12 petitioner. Mere inconvenience does not constitute a sufficient  
13 basis for a finding of substantial hardship. If the court determines  
14 there is a substantial hardship, the consolidated action shall be  
15 heard in the court in which the paternity action is filed.

16 (e) *A party to an assisted reproduction agreement may bring*  
17 *an action at any time to determine the existence of a parent and*  
18 *child relationship.*

19 *SEC. 4. Section 7633 of the Family Code is amended to read:*

20 7633. An action under this chapter may be brought *and an*  
21 *order or judgment may be entered* before the birth of the child.

22 *SEC. 5. Section 7825 of the Family Code is amended to read:*

23 7825. (a) A proceeding under this part may be brought where  
24 both of the following requirements are satisfied:

25 (1) The child is one whose parent or parents are convicted of a  
26 felony.

27 (2) The facts of the crime of which the parent or parents were  
28 convicted are of such a nature so as to prove the unfitness of the  
29 parent or parents to have the future custody and control of the  
30 child. *In making a determination pursuant to this section, the*  
31 *court may consider the parent's criminal record prior to the*  
32 *felony conviction.*

33 (b) The mother of a child may bring a proceeding under this  
34 part against the father of the child, where the child was conceived  
35 as a result of an act in violation of Section 261 of the Penal Code,  
36 and where the father was convicted of that violation. For  
37 purposes of this subdivision, there is a conclusive presumption  
38 that the father is unfit to have custody or control of the child.

39 *SEC. 6. Section 8613.5 is added to the Family Code, to read:*

1     8613.5. (a) *If the prospective adoptive parent is unable to*  
2 *make an appearance in person due to substantial hardship to the*  
3 *prospective adoptive parent, and the circumstances are*  
4 *established by satisfactory evidence, the court may, in its*  
5 *discretion, waive the personal appearance of the prospective*  
6 *adoptive parent. The appearance may be made for the*  
7 *prospective adoptive parent by counsel, commissioned and*  
8 *empowered in writing for that purpose. The power of attorney*  
9 *may be incorporated in the adoption petition.*

10    (b) *If the prospective adoptive parent is permitted to appear by*  
11 *counsel, the agreement may be executed and acknowledged by*  
12 *the counsel, or may be executed by the absent party before a*  
13 *notary public, or any other person authorized to take*  
14 *acknowledgments including the persons authorized by Sections*  
15 *1183 and 1183.5 of the Civil Code.*

16    (c) *If the prospective adoptive parent is permitted to appear by*  
17 *counsel, or otherwise, the court may, in its discretion, cause an*  
18 *examination of the prospective adoptive parent, other interested*  
19 *person, or witness to be made upon deposition, as it deems*  
20 *necessary. The deposition shall be taken upon commission, as*  
21 *prescribed by the Code of Civil Procedure, and the expense*  
22 *thereof shall be borne by the petitioner.*

23    (d) *The petition, relinquishment or consent, agreement, order,*  
24 *report to the court from any investigating agency, and any power*  
25 *of attorney and deposition shall be filed in the office of the clerk*  
26 *of the court.*

27    (e) *The provisions of this section permitting an appearance by*  
28 *counsel are equally applicable to the spouse of a prospective*  
29 *adoptive parent who resides with the prospective adoptive parent*  
30 *outside this state.*

31    (f) *If, pursuant to this section, neither prospective adoptive*  
32 *parent need appear before the court, the child proposed to be*  
33 *adopted need not appear. If the law otherwise requires that the*  
34 *child execute any document during the course of the hearing, the*  
35 *child may do so through counsel.*

36    (g) *If none of the parties appears, the court may not make an*  
37 *order of adoption until after a report has been filed with the*  
38 *court pursuant to Section 8715, 8807, 8914, or 9001.*

39    SEC. 7. *Section 8700 of the Family Code is amended to read:*

1 8700. (a) Either birth parent may relinquish a child to the  
2 department or a licensed adoption agency for adoption by a  
3 written statement signed before two subscribing witnesses and  
4 acknowledged before an authorized official of the department or  
5 agency. The relinquishment, when reciting that the person  
6 making it is entitled to the sole custody of the child and  
7 acknowledged before the officer, is prima facie evidence of the  
8 right of the person making it to the sole custody of the child and  
9 the person's sole right to relinquish.

10 (b) A relinquishing parent who is a minor has the right to  
11 relinquish his or her child for adoption to the department or a  
12 licensed adoption agency, and the relinquishment is not subject  
13 to revocation by reason of the minority.

14 (c) If a relinquishing parent resides outside this state and the  
15 child is being cared for and is or will be placed for adoption by  
16 the department or a licensed adoption agency, the relinquishing  
17 parent may relinquish the child to the department or agency by a  
18 written statement signed by the relinquishing parent before a  
19 notary on a form prescribed by the department, and previously  
20 signed by an authorized official of the department or agency, that  
21 signifies the willingness of the department or agency to accept  
22 the relinquishment.

23 (d) If a relinquishing parent and child reside outside this state  
24 and the child will be cared for and will be placed for adoption by  
25 the department or a licensed adoption agency, the relinquishing  
26 parent may relinquish the child to the department or agency by a  
27 written statement signed by the relinquishing parent, after that  
28 parent has satisfied the following requirements:

29 (1) Prior to signing the relinquishment, the relinquishing  
30 parent shall have received, from a representative of an agency  
31 licensed or otherwise approved to provide adoption services  
32 under the laws of the relinquishing parent's state of residence, the  
33 same counseling and advisement services as if the relinquishing  
34 parent resided in this state.

35 (2) The relinquishment shall be signed before a representative  
36 of an agency licensed or otherwise approved to provide adoption  
37 services under the laws of the relinquishing parent's state of  
38 residence whenever possible or before a licensed social worker  
39 on a form prescribed by the department, and previously signed by  
40 an authorized official of the department or agency, that signifies

1 the willingness of the department or agency to accept the  
2 relinquishment.

3 (e) The relinquishment authorized by this section has no effect  
4 until a certified copy is sent to, and filed with, the department.  
5 The licensed adoption agency shall send that copy by certified  
6 mail, return receipt requested, or by overnight courier or  
7 messenger, with proof of delivery, to the department no earlier  
8 than the end of the business day following the signing thereof.  
9 The relinquishment shall be final ~~within 10 business days after~~  
10 ~~receipt of the filing by the department~~ *when the department sends*  
11 *written acknowledgment of receipt of the relinquishment*, unless  
12 a longer period of time is necessary due to a pending court action  
13 or some other cause beyond the control of the department. *If the*  
14 *department fails to send written acknowledgment of receipt of the*  
15 *relinquishment, the relinquishment shall be deemed final 10*  
16 *business days after the relinquishment was sent to and filed with*  
17 *the department*. After the relinquishment is ~~filed and~~ final, it may  
18 be rescinded only by the mutual consent of the department or  
19 licensed adoption agency to which the child was relinquished and  
20 the birth parent or parents relinquishing the child.

21 (f) The relinquishing parent may name in the relinquishment  
22 the person or persons with whom he or she intends that  
23 placement of the child for adoption be made by the department or  
24 licensed adoption agency.

25 (g) Notwithstanding subdivision (e), if the relinquishment  
26 names the person or persons with whom placement by the  
27 department or licensed adoption agency is intended and the child  
28 is not placed in the home of the named person or persons or the  
29 child is removed from the home prior to the granting of the  
30 adoption, the department or agency shall mail a notice by  
31 certified mail, return receipt requested, to the birth parent signing  
32 the relinquishment within 72 hours of the decision not to place  
33 the child for adoption or the decision to remove the child from  
34 the home.

35 (h) The relinquishing parent has 30 days from the date on  
36 which the notice described in subdivision (g) was mailed to  
37 rescind the relinquishment.

38 (1) If the relinquishing parent requests rescission during the  
39 30-day period, the department or licensed adoption agency shall  
40 rescind the relinquishment.



1 (2) If the relinquishing parent does not request rescission  
2 during the 30-day period, the department or licensed adoption  
3 agency shall select adoptive parents for the child.

4 (3) If the relinquishing parent and the department or licensed  
5 adoption agency wish to identify a different person or persons  
6 during the 30-day period with whom the child is intended to be  
7 placed, the initial relinquishment shall be rescinded and a new  
8 relinquishment identifying the person or persons completed.

9 (i) If the parent has relinquished a child, who has been found  
10 to come within Section 300 of the Welfare and Institutions Code  
11 or is the subject of a petition for jurisdiction of the juvenile court  
12 under Section 300 of the Welfare and Institutions Code, to the  
13 department or a licensed adoption agency for the purpose of  
14 adoption, the department or agency accepting the relinquishment  
15 shall provide written notice of the relinquishment within five  
16 court days to all of the following:

17 (1) The juvenile court having jurisdiction of the child.

18 (2) The child's attorney, if any.

19 (3) The relinquishing parent's attorney, if any.

20 (j) The filing of the relinquishment with the department  
21 terminates all parental rights and responsibilities with regard to  
22 the child, except as provided in subdivisions (g) and (h).

23 (k) The department shall adopt regulations to administer the  
24 provisions of this section.

25 ~~SEC. 2.~~

26 *SEC. 8.* Section 8815 of the Family Code is amended to read:

27 8815. (a) Once the revocable consent to adoption has become  
28 permanent as provided in Section 8814.5, the consent to the  
29 adoption by the prospective adoptive parents may not be  
30 withdrawn.

31 (b) Before the time when the revocable consent becomes  
32 permanent as provided in Section 8814.5, the birth parent or  
33 parents may request return of the child. In such a case the court  
34 shall order the child restored to the care and custody of the birth  
35 parent or parents subject to the provisions of Section 3041.

36 (c) If the person or persons with whom the child has been  
37 placed have concerns that the birth parent or parents requesting  
38 return of the child are unfit or present a danger of harm to the  
39 child, that person's or those persons' only option is to report their  
40 concerns to the investigating adoption agency and the appropriate

- 1 child welfare agency. These concerns shall not be a basis for
- 2 failure to immediately return the child.

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